IN THE SUPREME COURT OF THE UNITED STATES

No. 08A1096

INDIANA STATE POLICE PENSION TRUST, ET AL., APPLICANTS

v.

CHRYSLER LLC, ET AL.

ON APPLICATION FOR STAY

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The Solicitor General, on behalf of the United States of America, respectfully submits this supplemental memorandum in opposition to the application for a stay and supplemental statement in support thereof submitted by the Indiana Funds.

Applicants agree that, if the transaction does not close by June 15, Fiat will no longer have an obligation to go forward with the transaction as currently structured. Appl. 28 ("[I]t is true that Fiat could back out of the deal if it is not consummated by June 15"). Applicants predict, both in their principal filing and in their supplemental statement, that if this Court delays approval of the transaction beyond June 15, Fiat will not exercise its right to renegotiate or abandon the transaction. Applicants' prediction is not well founded: if the sale is not consummated by June 15, there is a substantial possibility that Fiat will abandon the transaction or insist on materially different terms as a condition of its participation. And even if Fiat were ultimately willing to

consummate the sale on the existing terms after June 15, the delay occasioned by a stay would result in irreparable harm to the Debtors and the public interest.

1. By its terms, the Master Transaction Agreement will terminate "automatically, if the Closing Date shall not have occurred on or before June 15, 2009," absent a provision for extensions not applicable here. C.A. App. 3277 (Agreement § 10.01(c)).[1] Whether or not Fiat intends "never [to] walk away" from the transaction outright, Applicants' Supp. Statement 2 (citations omitted), it is undisputed that after June 15, neither Fiat nor Debtors will be bound by the proposed contract as it is currently structured. If Fiat and Debtors wish to continue with the transaction, a new agreement will be necessary, and Fiat will be free to insist on additional concessions as a condition of its approval. If a new agreement is reached, further approval proceedings in the bankruptcy court may well be required.

It is also undisputed that Chrysler's condition worsens each day it remains in bankruptcy, and that Fiat is aware of that situation. First, as the bankruptcy court explained, Chrysler's

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[1] Applicants' representation that Fiat "has the express right to extend its purchase rights for another 30 days," Appl. 28, wrongly suggests that Fiat can do so under any circumstances. Applicants omit the key fact that the provision for that 30-day extension applies only if the party electing the extension has not obtained certain relevant regulatory authorizations, C.A. App. 3277 (Agreement § 10.01(c)), a contingency not present here. All regulatory authorizations have been obtained, so this extension provision does not apply.

value has dropped significantly as Chrysler has spent its cash, sold its remaining cars, and discovered that two previously profitable car lines were no longer profitable and could not be individually sold at going-concern value. App. to Gov't Memo. 19 & n.16. Second, a Fiat representative testified at trial less than two weeks ago that it was "extremely difficult to judge the situation of [Chrysler] at that time [after June 15] and whether or not it's still possible to consummate that transaction," given considerations such as the lengthening period during which Chrysler generates no revenue and faces billions of dollars in payables. C.A. App. 1809-1810 (5/28/2009 Trial Tr. 332-334 (Altavilla testimony)).

Since that testimony was given, Chrysler's already perilous situation has continued to deteriorate. If Fiat is released from the obligation to consummate the transaction as currently structured, it will be free to demand additional concessions before concluding a new agreement. Nothing in the brief statement attributed to Fiat's CEO rules out that possibility. And if the parties to the sale are unable to agree on the terms of a new agreement, the alternative to the transaction is by now well established -- liquidation, with catastrophic effects. App. to Gov't Memo. 16-17, 24.

2. Even if, for the entire period of a stay, Fiat would remain wholly committed to the transaction as currently structured,

the stay would still seriously jeopardize the transaction. The Debtors are operating in bankruptcy by using debtor-in-possession financing lent by the United States government. Because Chrysler is not manufacturing cars and continues to lose money during each day of bankruptcy, each day consumes approximately $100 million in such financing. Appl. App. 25a; C.A. App. 1447 (Feldman deposition 66:2-4). As the President made clear when the Fiat transaction was announced, there are limits to what the government can lend. Remarks by the President on the Auto Industry (Apr. 30, 2009) <http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-on-the-Auto-Industry/> ("[W]e simply cannot keep this company, or any company, afloat on an endless supply of tax dollars. My job, as President, is to ensure that if tax dollars are being put on the line, they are being invested in a real fix that will make Chrysler more competitive.").

Accordingly, the need for government financing means that delay threatens the transaction in two ways. First, if the closing is delayed by more than approximately ten days, a sufficient amount of the current commitment of debtor-in-possession financing from the United States will have been consumed as to require the government either to increase its overall funding to the detriment of taxpayers, or abandon its role in the transaction. Second, that financing matures on June 30, 2009. If the transaction still has not closed, the government will be owed repayment. No alternative

non-governmental source of financing appears to be available. At that time, based on the then existing facts and circumstances, Chrysler could be forced to liquidate even if Fiat remains willing to participate in the transaction.

3. As set out in the government's principal response, even a delay of the transaction from now until June 15 poses material harms to Chrysler and to the public interest. Gov't Memo. 24. The bankruptcy court agreed, as evidenced by its shortening of the usual ten-day stay period. So did the court of appeals, which issued its mandate with only a limited further stay.

While Chrysler remains in bankruptcy with no confirmed alternative to liquidation, its situation deteriorates. Physical plant is deteriorating through disuse; so is human capital, as workers remain off the job. Although consummation of the sale would not result in the immediate re-commencement of manufacturing at Chrysler facilities, any additional delay threatens to exacerbate the serious problems that already exist, and thus to cause irreparable harm to the parties and to the public. See, e.g., C.A. App. 1567-1568 (detailing the significant effects of continued bankruptcy on suppliers and other key elements of the Chrysler business).

CONCLUSION

The application for a stay should be denied.

Respectfully submitted.

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